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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3855 OF 2000

M/s. Vidyut Metalics Ltd. ... Petitioner

V/s

1. Smt. Kusum Yellapurkar
2. Shri A.U.Purandare, Member
   Industrial Court, Thane. ... Respondents

Mr. R.S.Pai i/by M/s. Sanjay Udeshi & Co. for the petitioner.

Mr. Y.M.Pendse for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: RESERVED ON 8.10.2007

PRONOUNCED ON 16.10.2007

ORAL JUDGMENT:

1. The petition has been filed to challenge the order of the Industrial Court which has interfered with the order of the Labour Court under Section 44 of the M.R.T.U. & P.U.L.P. Act. The Labour Court, in the complaint filed by the respondent No.1 has declared that the petitioner had resorted to unfair labour practices by awarding a disproportionate punishment for the misconduct alleged against the 1st respondent. The Labour Court has set aside the punishment of dismissal

and substituted it by an order of "removal from service" and compensation of Rs.63,000/- as "rehabilitation compensation". The petitioner Company was also directed to pay the other legal dues to the 1st respondent. The Industrial Court has set aside the order of the Labour Court and has granted reinstatement with 50% of the back wages.

2. The facts giving rise to the present petition are as follows:

. The 1st respondent was employed as a Packer from 1966 with the petitioner. In 1985, the petitioner allegedly found that between 17.3.1985 and 3.4.1985, the 1st respondent had deliberately resorted to a go-slow and her production level had fallen below the normal production. A charge-sheet was issued to the 1st respondent on 21.6.1985. It enumerated various acts of misconduct including go-slow, fall in the production level, loitering on the premises and habitual neglect of work. A departmental enquiry was conducted against the 1st respondent in which she participated. The enquiry officer submitted his findings wherein he has held that the petitioner had proved that the 1st respondent had indulged in a go-slow and she was found loitering on the premises during office hours. On 16.6.1987 she was

dismissed from service.

3. It appears that a complaint was filed by the 1st respondent on 27.8.1991 against her dismissal from service. This complaint was filed under Items 1(a), (b), (d), (f) and (g) of Schedule IV of the M.R.T.U. & P.U.L.P. Act. The 1st respondent had pleaded in her complaint that there were no fixed norms of production. She had also pointed out that all other workers employed with her were giving the same production of 480 packets and not 544 as demanded by the petitioner. She has also pleaded that no action was taken against any of them, except one co-worker. The 1st respondent has also pleaded that she was actively involved in the functioning of the trade union in the petitioner Company which was not approved by the petitioner. She has contended that she has been victimized because of her trade union activities.

4. The petitioner filed its written statement opposing the complaint and contended that the dismissal order was based on proved misconducts which were of a serious nature. It was pleaded that action had been taken against the 1st respondent only after she was found guilty by the enquiry officer in a domestic enquiry.

5. On 24.4.1995, the Labour Court partly allowed the complaint by directing the payment of "rehabilitation compensation" of Rs.63,000/-, besides the legal dues payable to the 1st respondent. The Labour Court held that the enquiry instituted against the 1st respondent was fair and proper. It also came to the conclusion that the findings of the enquiry officer were not perverse. The Labour Court then observed that the two witnesses of the management had deposed to the effect that they were not aware as to whether a settlement was signed between the management and the workers or their union, fixing the norms of production for the Packers. The Labour Court found that the charge of loitering in the premises was not proved. The Labour Court held that the charge of wilful slowing down of work was a serious misconduct which had been proved. This misconduct, according to the Labour Court, leads to serious consequences as the nation suffers losses besides the losses sustained by the employer.

6. Being aggrieved by the decision of the Labour Court, the 1st respondent preferred a revision application before the Industrial Court being Revision Application (ULP) No. 123 of 1995. The Industrial Court, held that the findings of the Labour Court that the misconduct was proved need not be disturbed. However, it observed that

it was admitted by the petitioner's witness that out of 22 Packers, only 3 had given the production of 544 packets, whereas all the others including the 1st respondent had given the production of 480 packets. The Industrial Court observed that, in these circumstances, while exercising its powers under Section 44 of the M.R.T.U. & P.U.L.P. Act, the Labour Court fell in error in refusing to grant reinstatement to the 1st respondent and by granting the compensation in lieu of reinstatement. The Industrial Court has observed that the past service record of the 1st respondent of 22 years is unblemished. The Industrial Court found that the 1st respondent had reported late for work on three days and was found loitering on three occasions for about 20 to 25 minutes on each occasion. These two misconducts, according to the learned counsel, did not warrant the punishment of dismissal or the denial of the relief of reinstatement in service. The Industrial Court also observed that there was no material available on record to indicate that any action was taken by the petitioner against the other employees who had similarly given low production. It is in these circumstances that the Industrial Court observed that the misconduct alleged against the 1st respondent was minor and that she was entitled to be reinstated in service with 50% of the back wages.

7. The learned counsel appearing for the petitioner submits that the Industrial Court while exercising its powers under section 44 of the M.R.T.U. & P.U.L.P. Act has traversed beyond the scope of its jurisdiction by interfering with the punishment imposed by the Labour Court. He submits that Section 44 of the M.R.T.U. & P.U.L.P. Act does not permit the Industrial Court to exercise its powers beyond the powers of superintendence which are akin to the powers of this Court under Article 227 of the Constitution of India. He relies on the decision of this Court in the case of **R.A.Yadav & ors. v/s Special Steels Ltd. & anr., reported in 2003 I C.L.R. 443** and in the case of **Jayhind Vithoba Mahadik v/s General Manager, Maharashtra Scooters Ltd., reported in 2004 III C.L.R. 166.** The learned counsel also submits that the petitioner had justifiable reasons not to proceed against the others who had given similar production levels as the 1st respondent. One of her co-workers was charged for similar acts of misconduct. However, since that workman submitted an apology, she was allowed to continue in service. The learned counsel, therefore, submits that the 1st respondent and the other workman cannot be considered as two similarly situated workmen. He relies on the judgment of the Supreme Court in the case of **Obettee Pvt. Ltd. v/s**

Mohd. Shafiq Khan, reported in 2005 III L.L.J. 1089.

8. Mr. Pendse, the learned advocate appearing for the 1st respondent submits that, it is true that under Section 44 of the M.R.T.U. & P.U.L.P. Act, this Court

and the jurisdiction vested in the Industrial Court is very limited. However, he submits that the Industrial Court can always modify the punishment if the Labour Court has imposed the punishment on the basis of perverse findings. According to the learned advocate, the production norms were changed only in 1986. In 1985 when the 1st respondent was charge-sheeted, the production level of 22 Packers except 3, was 480 packets. He submits that the 1st respondent had also given similar production, despite which action was initiated against her. The learned advocate submits that the Labour Court has incorrectly concluded that the 1st respondent was not entitled to be reinstated as she had indulged in a go-slow. He submits that the Industrial Court has merely corrected the observation of the Labour Court wherein it has held that the reduction in the production would lead to a loss not only for the employer but also to the nation. He points out that the Labour Court has ignored the evidence of the management’s witnesses at the enquiry where they have

admitted that there was no settlement fixing the production norms. The learned advocate points out that the Industrial Court has taken into consideration these factors and has, therefore, reduced the punishment by directing reinstatement with 50% of back wages. He submits that the Industrial Court has rightly observed that, in the ultimate analysis the order of removal and an order of dismissal result in cessation of employment for the workman and, therefore, the Industrial Court had appropriately modified the punishment.

9. The powers vested in the Industrial Court under Section 44 of the M.R.T.U. & P.U.L.P. Act are limited. However, the Industrial Court can exercise its powers when there is a perversity in the order of the Labour Court or there is a patent error on the face of the record. In the present case, the Industrial Court has not reappreciated the evidence on record but has confirmed the findings of the Labour Court regarding the misconduct alleged against the 1st respondent. However, it has observed that the Labour Court fell in error by not taking into consideration the admission of the witnesses for the petitioner before the enquiry officer. These admissions were to the effect that there was no settlement or agreement under which the norms of production were fixed. The production norms, according

to the enquiry officer were not fixed by a settlement but by oral instructions given to the packers by their superiors on duty. The enquiry officer, on the basis of the evidence led before him, has observed that only three packers gave the production of 544 packets per day. All the others, including the 1st respondent, were able to produce 480 packets per day per shift. The enquiry officer has observed that the witnesses of the petitioner could not establish the basis for these norms of production. The Industrial Court has, therefore, held that the petitioner had erroneously dismissed the 1st respondent from service. The Industrial Court having considered all these factors has modified the punishment.

10. Another aspect which has weighed with the Industrial Court is that the co-workman of the 1st respondent who had been charged for the same or similar acts of misconduct had been retained in service. The submission of the learned counsel for the petitioner that the two cases were distinct is unsustainable. In the case of **Obettee Pvt. Ltd.,** action was initiated against the workmen for proceeding on an illegal strike. During the pendency of the domestic enquiry two workers tendered an unqualified apology. On this basis no further action was taken against those workmen. The

enquiry continued against the other workmen. The facts in the present case are different. Both workmen were charge-sheeted. Enquiries were held against both of them. The petitioner dismissed both the workmen. The 1st respondent challenged the order of dismissal. Before the other workman could challenge the order, the petitioner offered to retain her if she tendered an apology. A similar offer was not made to the 1st respondent.

11. In my view, there is no need to interfere with the order of the Industrial Court. For cogent reasons it has directed reinstatement with continuity of service with 50% back wages. The 1st respondent has already retired from service and, therefore, would be entitled to the back wages as awarded by the Industrial Court as also retiral benefits.

12. Petition dismissed. Rule discharged. No costs.

13. At the request made by the learned advocate for the petitioner, the order is stayed for a period of four weeks.

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